

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GEORGE WELLER d/b/a
WELLER CONSTRUCTION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 86-41

ORDER OF DISMISSAL

This matter comes before the Pollution Control Hearings Board on the Motion to Dismiss of respondent Puget Sound Air Pollution Control Agency (PSAPCA). The Agency asserts that the appeal herein was not properly filed within the time required by law and that, therefore, the Board lacks jurisdiction.

The Motion is based on the files herein. The order appealed was issued by PSAPCA on January 27, 1986, and received by appellant by certified mail on January 28, 1986.

The appeal was filed with this Board on February 28, 1986.

1 Detailed instructions on the filing of appeals were sent to appellant
2 with the order at issue. These instructions included the following:

3 The original (and one copy) of the Notice of Appeal
4 with proof of service is to be filed with the
5 Pollution Control Hearings Board...within the thirty
6 (30) day time period specified herein, pursuant to
7 RCW 43.21B.230.

8 The Board, by letter, provided appellant an opportunity in which
9 to respond to respondent's Motion to Dismiss. A response was made
10 urging that we interpret the appeal period as comprising 30 working
11 days rather than 30 calendar days.

12 Now, having considered the entire file in this matter, the Board
13 reluctantly concludes that the Motion must be granted. The thirty
14 days provided for appeals from orders by statute are calendar days.
15 RCW 43.21B.230. The time begins to run on the date the order is
16 communicated to the appealing party. WAC 371-08-080.

17 The appeal itself can be initiated only by filing, within the time
18 prescribed, with the tribunal established to hear such cases, namely
19 this Board. The date of filing is the date of actual receipt by the
20 Board. WAC 371-08-080. Timely filing with the Board is a
21 jurisdictional requirement. Eckert Overseas Agency v. PSAPCA, PCHB
22 No. 901 (1975). Here the appeal was received one day too late.

23 All persons are obliged to conform with the time requirements
24 established by law. The Board is without discretion to alter the
25 limitations on its jurisdiction. Therefore, this case should be, and
26

CERTIFICATION OF MAILING

I, Phyllis R. Weaver, certify that I mailed, postage prepaid, copies of the foregoing document on the 23rd day of April, 1986, to each of the following-named parties at the last known post office addresses, with the proper postage affixed to the respective envelopes:

George Weller, dba
Weller Construction
714-22nd East
Seattle, WA 98112

Keith D. McGoffin, Attorney
McGoffin and McGoffin
818 South Yakima Avenue
Tacoma, WA 98405

Ron Busby
PSAPCA
P. O. Box 9863
Seattle, WA 98109



PHYLLIS R. WEAVER, Clerk of the
POLLUTION CONTROL HEARINGS BOARD

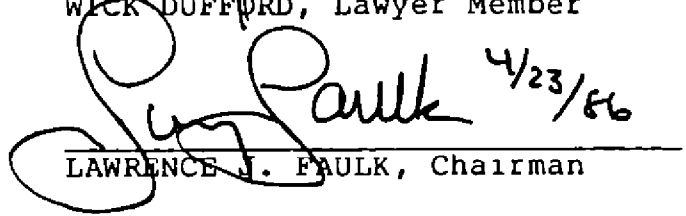
1 the same hereby is, dismissed.

2 SO ORDERED this 23rd day of April, 1986.

3 POLLUTION CONTROL HEARINGS BOARD

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5 WICK DUFFORD, Lawyer Member

6  4/23/86

7 LAWRENCE J. FAULK, Chairman

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9 GAYLE ROTHROCK, Vice Chairman

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26 ORDER OF DISMISSAL
27 PCHB No. 86-41